

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

ADAM GRAHAM AND GINA
GRAHAM,

Plaintiffs,

vs.

DMG MORI USA, INC.,
Defendant.

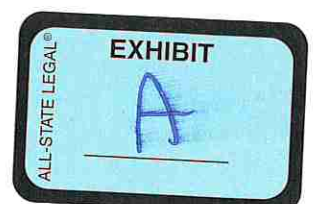
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No. 2019 - 751

AMENDED COMPLAINT

AND NOW, this 30th day of August, 2019, comes the Plaintiffs, Adam Graham and Gina Graham, by and through their attorneys, Shafer Law Firm, P.C., and file the within Amended Complaint, averring in support thereof as follows:

1. Plaintiffs Adam Graham and Gina Graham, husband and wife, are adult individuals with a place of residence at 117 East 6th Street, Oil City, Venango County, Pennsylvania 16301.
2. Upon information and belief, Defendant DMG MORI USA, Inc., (hereinafter "DMG MORI") is a United States corporation with its headquarters located at 2400 Huntington Blvd., Hoffman Estates, Illinois 60192.
3. At all relevant times hereto, Defendant DMG MORI, acted by and through their agents and/or servants and/or employees who in turn were acting within the scope of their employment and on behalf of Defendant.
4. On May 11, 2018, Plaintiff Adam Graham was working at his place of employment at Graham Machine, Inc., 1581 Pittsburgh Road, Franklin, Pennsylvania 16323, operating a Mori Seiki, Model NL2500, Serial No. NL25IL5221, CNC machine, and was in the process of fabricating a metal part known as an Adjusting Nut No. 2 Flange (Special).
5. On May 11, 2018, while working and operating the Mori Seiki CNC machine, Plaintiff



Adam Graham suffered severe and serious injuries, including, but not limited to, his right-hand index finger being torn/amputated from his right hand by the rotating spindle of the CNC machine, and including lacerations, contusions, and other physical injuries to same right hand, and mental anguish resulting from same incident.

COUNT I
Negligence

ADAM GRAHAM vs. DMG MORI USA, INC.

6. Plaintiffs incorporate by reference paragraphs 1 through 5 of the Complaint with the same force and effect as though each were set forth at length herein.

7. All of the resultant losses, injuries, and damages sustained by Plaintiff Adam Graham resulted directly and proximately from the reckless, wanton, or negligent conduct of Defendant DMG MORI in the following particulars with gross disregard for the safety of users of its products:

- a. Failing to properly and/or adequately provide protective devices and/or safety features on the CNC machine to prevent such injuries; and/or
- b. Failing to properly design the CNC machine in order to avoid such injuries; and/or
- c. Failing to adequately assemble and fabricate the CNC machine in order to provide a safe CNC machine; and/or
- d. Failing to properly and/or adequately manufacture the CNC machine in order to provide a safe CNC machine; and/or
- e. Failing to properly and/or adequately design and/or fabricate and/or manufacture and/or sell and/or supply the CNC machine in a safe condition; and/or
- f. Failing to adequately and/or properly test and/or inspect the CNC machine in order to provide a safe CNC machine; and/or
- g. Failing to provide and/or establish and/or follow proper and/or adequate quality

control methods in the manufacture of the CNC machine so as to provide a safe CNC machine; and/or

h. Failing to keep abreast of the state of the art in science, engineering, and specific machine industry in connection with the design of the CNC machine; and/or

i. Failing to disclose to purchasers or users that the CNC machine was defectively and/or unreasonably designed, thereby making it dangerous to use; and/or

j. Failing to use that degree of care, skill, foresight, and caution required under the circumstances and/or by the law of the Commonwealth of Pennsylvania.

8. As a direct and proximate result of the reckless, wanton, or negligent conduct of Defendant DMG MORI, Plaintiff Adam Graham has suffered the injuries set forth in paragraph 5 above.

9. As a direct and proximate result of the injuries sustained, Plaintiff Adam Graham suffered and/or suffers and/or will continue to suffer from physical and/or mental anguish, pain, suffering, and inconvenience.

10. As a direct and proximate result of the injuries sustained, Plaintiff Adam Graham has suffered and may continue to suffer shock and injury to the nerves and the nervous system, and has suffered and may continue to suffer emotional distress.

11. As a direct and proximate result of the injuries sustained, Plaintiff Adam Graham has been deprived and may continue to be deprived of the ordinary pleasures of life.

12. As a direct and proximate result of the injuries sustained, Plaintiff Adam Graham has been compelled and/or is compelled and/or may continue to be compelled to expend monies for medical aid, medicines, and the like.

13. As a direct and proximate result of the injuries sustained, Plaintiff Adam Graham has suffered and/or continues to suffer and/or may, in the future, suffer a loss of earnings and his earning

power has been and/or may be diminished and lessened.

WHEREFORE, Plaintiffs claim of Defendant DMG MORI damages in a sum in excess of \$35,000, exclusive of interest and punitive damages.

COUNT II
Breach of Warranty

ADAM GRAHAM vs. DMG MORI USA, INC.

14. Plaintiffs incorporate by reference paragraphs 1 through 13 of this Complaint with the same force and effect as though each were set forth at length herein.

15. All of the resultant losses, damages, and injuries sustained by Plaintiff Adam Graham resulted directly and proximately from Defendant's breach of express and/or implied warranties of merchantability or fitness for a particular purpose in the following particulars:

- a. The CNC machine was not fit for the purpose for which the CNC machine was to be used; and/or
- b. The Defendant knew, or should have known, that the CNC machine was dangerous and likely to cause damage to users; and/or
- c. The CNC machine was not of merchantable quality and was not in conformity, insofar as safety is concerned, with CNC machines used in a normal course of business; and/or
- d. That the CNC machine was not properly and adequately tested and/or inspected by the Defendant in order to provide a safe CNC machine; and/or
- e. The Defendant did not disclose to the users of the CNC machine, such as Plaintiff Adam Graham, that the CNC machine was defectively and/or unreasonably designed, thereby making the CNC machine dangerous to use; and/or
- f. The Defendant knew, or should have known, that Plaintiff Adam Graham was relying upon the expertise of the Defendant in designing, fabricating, manufacturing, and/or supplying

the CNC machine; and/or

g. In expressly or impliedly warranting that the CNC machine was properly and/or adequately tested and inspected when the same was not true; and/or

h. In expressly or impliedly warranting that the CNC machine was safe for use; and/or

i. In expressly or impliedly misrepresenting that the CNC machine was safe for use; and/or

j. In expressly or impliedly warranting that the CNC machine was safe for use in compliance with the safety standards of the industry and of the federal government and the state, county, and city governments insofar as said safety standards govern the design, fabrication, and manufacture of said CNC machines.

16. As a direct and proximate result of the breach of these express and/or implied warranties, Plaintiff Adam Graham has suffered the injuries set forth in paragraph 5 above.

17. As a result of the above injuries, Plaintiff Adam Graham has sustained the damages set forth in paragraphs 9 through 13 above.

WHEREFORE, Plaintiffs claim of Defendant DMG MORI damages in an amount in excess of \$35,000, exclusive of interest and punitive damages.

COUNT III
Strict Liability

ADAM GRAHAM vs. DMG MORI USA, INC.

18. Plaintiffs incorporate by reference paragraphs 1 through 17 of this Complaint with the same force and effect as though each were set forth at length herein.

19. All of the resultant losses, damages, and injuries sustained by Plaintiff Adam Graham resulted directly and proximately from the conduct of Defendant subjecting it to strict liability in tort in the following particulars:

a. Defendant DMG MORI in regular course of manufacturing, designing, and fabricating machinery, ultimately sold the CNC machine to Plaintiff Adam Graham's employer, Graham Machine, Inc.; and

b. At the time of the incident, Plaintiff Adam Graham was using the CNC machine in a reasonable fashion; and

c. The defective condition of the CNC machine proximately caused the incident and the injuries sustained by Plaintiff Adam Graham; and

d. Defendant knew, or should have known, that users of the CNC machine could be seriously injured if they were accessing a point of operation with the E-Stop system out of reach and inaccessible; and

20. As a direct and proximate result of the conduct of Defendant, Plaintiff Adam Graham suffered the injuries set forth in paragraph 5 above.

21. As a result of the above injuries, Plaintiff Adam Graham sustained the damages set forth in paragraphs 9 through 13 above.

22. Defendant's reckless, wanton, or gross disregard for the safety of users of their CNC machine gives rise to liability by Defendant to Plaintiffs for punitive damages.

WHEREFORE, Plaintiffs claim of Defendant DMG MORI damages in an amount in excess of \$35,000, exclusive of interest and punitive damages.

COUNT IV
Loss of Consortium

GINA GRAHAM vs. DMG MORI USA, INC.

23. Plaintiff Gina Graham incorporates by reference paragraphs 1 through 22 of this Complaint with the same force and effect as though each were set forth at length herein.

24. At the time of the negligent acts complained of in paragraphs 1 through 22 herein, the

Plaintiffs Adam Graham and Gina Graham were married and continue to be married.

25. As a result of the wrongful and negligent acts of the Defendant, and each of them, the Plaintiff Gina Graham, was caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of her marital relationship.

26. All of the aforesaid injuries and damages were caused solely and proximately by the negligent actions and omissions of the Defendant, to include the placement of the subject CNC Machine in the stream of commerce within this Commonwealth and ultimately its use by Plaintiff Adam Graham within the scope of his employment by his employer, Graham Machine, Inc.

WHEREFORE, Plaintiffs claim of Defendant DMG MORI damages in an amount in excess of \$35,000, exclusive of interest and costs and punitive damages.

Respectfully submitted,

SHAFFER LAW FIRM, P.C.

Date: 8/30/2019


By: 

Jason D. Reagle, Esquire
Attorneys for Plaintiffs
212 West Central Avenue
Titusville, PA 16354
Tel.: (814) 827-2789

VERIFICATION

We, Adam Graham and Gina Graham, verify that the facts and statements set forth in the foregoing pleading are true and correct upon our personal knowledge. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: August 30, 2019


Adam Graham


Gina Graham

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CERTIFICATE OF COMPLIANCE

This form is associated with the pleading titled Amended Complaint, dated August 30, 2019.

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/30/2019

SHAFFER LAW FIRM, P.C.

By: _____

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